IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.671 OF 2007
IN
NOTICE OF MOTION NO.4103 OF 2007
IN
S.C.SUIT NO.1470 OF 2007

Mrs.Kesari Mujaffar Khan .. Applicant

Versus

M/s. City Maker Builders and Developers .. Respondent (Orig.Defendant)

Shri A.L. Patki i/b. Shri Manoj Mhatre for the Appellant
Shri P.S. Dani with Shri Deepak Lulia for the Respondent

CORAM : S.R. SATHE,J.
DATED : 07/09/2007

ORAL ORDER :-

1. Heard both the learned Advocates at length.

2. Appellant-original Plaintiff in S.C. Suit No.1470 of 2007 has preferred this appeal against the order passed by the Judge, City Civil Court, Greater Bombay whereby Plaintiff's Notice of Motion No.4103 of 2007 seeking temporary injunction against the defendant restraining them from demolishing suit premises consisting of 9 structures was dismissed. For the sake

of convenience hereafter the parties shall be referred to as 'Plaintiff' and 'defendant'.

3. The brief facts giving rise to this appeal are as under :-

It is Plaintiff's case that her father Mujaffar Khan was the owner of the land bearing Survey No.355, Hissa No.A-1 corresponding CTS No.17(pt). Mujaffar Khan expired in 2005 leaving behind Plaintiff as the only legal heir. According to her, name of her father was shown in the record of rights as 'Imla Malak'. The suit property was not declared as slum area. According to Plaintiff, when she made inquiry with competent authorities they also informed her that the suit property is not declared as slum area. In the month of March-2007, she learnt about the circulars being distributed amongst the occupants of the suit property informing them to collect their cheques for alternate accommodation and vacate the suit premises before 10/03/2007. She came to know that the defendant had issued the said circulars. The defendants threatened the occupants to vacate the suit premises and that on their failure to do so within 7 days the defendant

would demolish the same. As defendant had not sought any permission of the Plaintiff to demolish the suit structure and not entered into any agreement with Plaintiff, she filed the present suit for declaration that threat given for demolition of the suit premises is illegal and for permanent injunction restraining the defendant from demolishing the suit premises consisting of 9 structures. The Plaintiff also filed the above mentioned Notice of Motion and prayed for temporary injunction restraining the defendants from demolishing the suit premises till the the disposal of the suit.

4. The defendant filed their Written Statement and opposed the Plaintiff's claim. According to defendant, suit premises are declared as slum land and they are developing the property as per Section-33(10) of Development Control Regulation of Greater Bombay 1991, by obtaining necessary permission from MHADA, the original owner of the land. Defendant further contended that Plaintiff was and is not in possession of the suit property. In fact, her father was also not the owner of the suit premises. Though, Plaintiff had alleged that the suit premises are occupied by her tenants, it is

not correct and the Plaintiff has thus no right, title and interest in the suit property. According to defendant, those who were occupying the suit premises had in fact received photo passes in respect of their individual structures when the same were declared as slum lands. The defendant further contended that after obtaining consent of the actual occupants of the suit property they have submitted the proposal for development and MHADA has granted No Objection Certificate. Similarly, Slum Rehabilitation Authority has also granted LOI regarding the suit property in favour of defendant for re-development of the said property. Not only that but occupants of the structure have also formed one Co-operative Society by name Shivneri Golibar Co-operative Society and it is duly registered. The defendant contended that they are not acting unauthorizedly or illegally and therefore prayed for the dismissal of the Notice of Motion.

5. After hearing the arguments advanced on behalf of both the sides and considering the documents produced by them, the learned Trial Judge came to the conclusion that Plaintiff has failed to make out any

prima facie case for granting temporary injunction and the balance of convenience is also not in favour of Plaintiff. Naturally, he dismissed the Notice of Motion.

6. Being aggrieved by the above mentioned order, Plaintiff has filed the present appeal. In this appeal before me, Shri A.L. Patki, learnd Advocate for the Appellant has urged only two points. Firstly, he submitted that the learned Trial Judge has failed to consider the fact that the name of Plaintiff's father was appearing in the record of rights as 'Imla Malak'. Secondly, he canvassed before me that the learned Trial Judge ought to have held that the documents produced by the defendant do not indicate that the suit property is not covered under the Scheme formulated for the slum area but it was a general scheme. He, therefore, submitted that without the consent of the Plaintiff, defendants are not entitled to demolish the suit property and if temporary injunction is not granted then Plaintiff would suffer irreparable loss. He, therefore, submitted that order passed by the learned Trial Judge be set aside and temporary injunction be

issued as prayed for. As against this, learned Advocate for the defendant supported the order passed by the learned Trail Judge.

7. At the outset, it must be mentioned that though, it is alleged by the Plaintiff that her father Mujaffar Khan was the owner of the property, if we see the property card of the property in question then it is very clear that MHADA is the owner of the said property. Even if, this fact is not disputed during the course of arguments. All that has been submitted is that the name of Plaintiff's father is appearing in the said property card as 'Imla Malak'. Plaintiff has come out with a specific case that the suit property is occupied by 9 tenants and Plaintiff is recovering rent from them. It is pertinent to note that in order to substantiate this case, Plaintiff has not produced any evidence worth the name. Not even a single rent receipt is produced by the Plaintiff. Nor she has produced any record to show that she had informed the municipal authorities that the property is occupied by tenants. So, merely because the name of Mujaffar Khan is appearing in the property card as 'Imla Malak' we can

not jump to the conclusion that he was the lawful owner of the suit property as contemplated by Section-2(f) of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (hereinafter referred to as the said Act). It would be worthwhile to see what section-2(f) of the said Act says. It runs as follows:-

> **"(f) "owner", when used with reference to any building or land, means the person who receives or is entitled to receive the rent of the building or land, if the building or land were let, and includes,-**
> **(i) an agent or trustee who receives such rent on account of the owner;**
> **(ii) an agent or trustee who receives the rent of, or is entrusted with, or concerned for, any building or land devoted to religious or charitable purpose;**
> **(iii) a receiver, sequestrator or manager appointed by a court of competent jurisdiction to have the charge of or to exercise the rights of owner of the said building or land, and**
> **(iv) a mortgagee-in-possession;**
> **{but does not include, a slumlord;}"**

8. When we find that Plaintiff is in fact not the owner of the property, she is in fact not entitled to claim any interest in the property because there is also nothing on record to show that the suit property

was/is occupied by her. On the contrary, there is abundant material on record to show that the same is occupied by 9 persons mentioned in the defendant's reply. It is worth to note that the defendants have given all details about the photo passes given to the said tenants. It is not in dispute that the said tenants have formed a Co-operative Society as mentioned above. The Plaintiff's father could be said to be Slum Lord as contemplated by Section-2(h-a) of the said Act. The said Sections says:-

> ***"(h-a) "Slumlord" means a person, who illegally takes possession of any lands (whether belonging to Government, local authority or any other person) or enters into or creates illegal tenancies or leave and license agreements or any other agreements in respect of such lands, or who constructs unauthorized structures thereon for sale or hire, or gives such lands to any persons on rental or leave and license basis for construction, or use and occupation, of unauthorized structures, or who knowingly gives financial aid to any persons for taking illegal possession of such lands, or for construction of unauthorized structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation, or who evicts or attempts to evict any such occupiers by force without resorting to the lawful***

procedure, or who abets in any manner the doing of any of the abovementioned things;}"

9. It has also come on record that 9 occupants of the suit premises are in fact paying the rent to MHADA. It was tried to be argued on behalf of the Plaintiff that in view of Section-4 of the said Act it can not be said that the suit premises are declared as Slum area. According to him, the scheme declared is a general scheme prepared by the Slum Rehabilitation Authority which is notified in the gazate on 19/04/1998 but there is no specific record to show that the property in question comes under the Slum Area. However, while considering this aspect useful reference can be made to a case **Pooja Enterprises V/s. ECO, SRA, MHADA, reported in 2000(3) MLJ 147** wherein it has been held that,

"Section 4 does not come into play once a general scheme is prepared under section 3-B. That being the case, the Scheme as framed under 3B being Scheme for Greater Mumbai as farmed by the Authority for the said area, will be the general Scheme in so far as the present area is concerned. Once the general scheme is farmed for the area, under the annexure to Development Control Regulation No.33(10) part II(ii), if an

area qualifies under section 4 of the slum Rehabilitation Act to qualify as a Slum area and has been censured or declared and notified it shall be deemed to be treated as Slum Rehabilitation."

In view of the above observations and the other material placed on record, I have no hesitation to hold that the suit property comes under the Slum Area.

10. The defendants have produced the xerox copies of the 7 photopasses of the occupants of the suit structure. Not only that but they have also given details of the same and the names of 9 occupants of the suit structure. As the defendants obtained the necessary permission from the occupants and gave proposal for re-development of the suit property under section-33(10) of the Development Control Regulation for Greater Bombay, 1991 to SRA and submitted necessary application and paid the security charges, the slum rehabilitation authority has also granted LOI in respect of the suit property in favour of defendants. MHADA has also issued NOC in favour of the defendant for re-development. What is more to be noted is that necessary public notices for re-development of the suit

property were issued in daily local newspaper. However, nobody raised any objection before the Slum Rehabilitation Authority. If really the property in question would have been occupied and owned by the Plaintiff and she had any right, title and interest in the same, she would have raised objection at that time but that has also not happened. It must be noted that the defendants had even displayed all the no objections received from the concerned authorities for the suit property. But even at that time, Plaintiff did not raise any objection. So, all these circumstances do indicate that Plaintiff has not placed any material on record to show that prima facie Plaintiff has got right, title and interest in the suit property and the defendants are acting highhandedly or illegally.

11. In view of above, I have no hesitation to hold that learned Trial Judge has rightly held that Plaintiff has failed to make out any prima facie case for granting temporary injunction. It must be noted that the occupants of the suit property have in fact given their consent for the re-development by the defendants. If, temporary injunction is granted at this

stage then the entire re-development scheme will be stalled and it would certainly cause irreparable loss to the defendants and the occupants who are entitled to get alternate accommodation. So, the balance of convenience is also not in favour of the Plaintiff.

12. There is nothing on record to show that the order passed by the learned Trial Judge is illegal or that the view taken by him is not a possible view. Hence, I do not find any reason to interfere with the said order.

Appeal is dismissed.

Under the circumstances of the case parties to bear their own costs of this appeal.

(S.R. SATHE,J.)